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Honorable Brian D. Lynch

Chapter 13

7 UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

8 In Re:

9 MICHAEL LEE SORENSEN; KARLA ANN  
10 SORENSEN,

Debtors.

11  
12 MICHAEL LEE SORENSEN; KARLA ANN  
13 SORENSEN,

Plaintiffs,

14 vs.

15 RUSHMORE LOAN MANAGEMENT  
16 SERVICES, LLC,

Defendant.

Chapter 13 Proceeding

Case No. 18-42652-BDL

**Adv. Proc. No.: 21-04053-BDL**

**DEFENDANT RUSHMORE LOAN  
MANAGEMENT SERVICES, LLC'S  
ANSWER TO COMPLAINT**

17 Defendant Rushmore Loan Management Services, LLC ("Rushmore" or "Defendant")

18 hereby Answers the Plaintiffs' Complaint:

19 **I. INTRODUCTION**

20 1. Rushmore admits that Plaintiffs (the "Sorensens") bring an action against

21 Rushmore, but Rushmore denies the remaining allegations of the Introduction.

22 **II. JURISDICTION**

23 2. Rushmore admits the allegations in paragraph 2 regarding Jurisdiction.

DEFENDANT RUSHMORE LOAN MANAGEMENT SERVICES, LLC'S  
ANSWER TO COMPLAINT – 1

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### III. PARTIES

3.1 On information and belief, Rushmore admits the allegations in paragraph 3.1.

3.2 Rushmore admits that it is a Delaware limited liability company and denies the remaining allegations of paragraph 3.2.

### IV. STATEMENT OF FACTS

4.1 Rushmore admits that the Sorensens signed a note and deed of trust related to the property located at 18230 Alexander Lane SE, Rochester, WA 98578 on July 18, 2008, the terms of which speak for themselves. Except as expressly admitted and to the extent the allegations conflict with the terms of the documents, Rushmore denies the allegations in paragraph 4.1.

4.2 Rushmore admits that the Sorensens entered into a loan modification agreement dated July 25, 2012, the terms of which speak for themselves. Rushmore lacks sufficient information to either admit or deny why the Sorensens entered into the loan modification agreement and so denies the same. Except as admitted and to the extent the allegations conflict with the terms of the modification agreement, Rushmore denies the allegations in paragraph 4.2.

4.3 Rushmore admits that the Sorensens fell behind on their mortgage payments in 2014. Except as admitted, Rushmore lacks sufficient information to either admit or deny the remaining allegations of paragraph 4.3 and so denies the same.

4.4 Rushmore admits the allegations of paragraph 4.4

4.5 Rushmore admits the allegations of paragraph 4.5

4.6 Rushmore admits that it filed a Proof of Claim in the Sorensens' Chapter 13 case, the terms of which speaks for itself. Except as expressly admitted and to the extent the allegations conflict with the terms of the documents, Rushmore denies the allegations of paragraph 4.6.

1           4.6.1 Rushmore admits the allegations of paragraph 4.6.1 that the Proof of Claim  
2                           stated that the principal balance owing was \$147,488.40, but denies the  
3                           Proof of Claim stated that was the total balance owed..

4           4.6.2 Rushmore admits the allegations of paragraph 4.6.2 but denies that the total  
5                           monthly payment set forth in the Proof of Claim would be sufficient to  
6                           cover the arrears on the Sorensens' obligations.

7           4.7 Rushmore admits the Sorensens Amended Chapter 13 plan (ECF #20) was  
8 confirmed by the Court, the terms of which speak for themselves and Rushmore denies any  
9 allegations to the contrary.

10           4.7.1 Rushmore admits the allegations of paragraph 4.7.1.

11           4.7.2 Rushmore admits the allegations of paragraph 4.7.2.

12           4.7.3 Rushmore admits the allegations of paragraph 4.7.3.

13           4.7.4 Rushmore admits the allegations of paragraph 4.7.4.

14           4.8 Rushmore admits that the Sorensens became delinquent in June 2019. Except as  
15 expressly admitted, Rushmore lacks sufficient information to either admit or deny the remaining  
16 allegations of paragraph 4.8 and so denies.

17           4.9 Rushmore admits that the Sorensens submitted plan payments that at times were  
18 less than the full required payment for the monthly mortgage payments and the cure payments.  
19 Except as admitted, Rushmore lacks sufficient information to either admit or deny the remaining  
20 allegations of paragraph 4.9 and so denies.

21           4.10 Rushmore admits that it filed a Notice of Mortgage change on April 24, 2020, the  
22 terms of which speak for itself. Except as expressly admitted and to the extent the allegations  
23 conflict with the terms of the documents, Rushmore denies the allegations of paragraph 4.10.

1           4.11     Rushmore admits that it filed a Notice of Mortgage change on March 16, 2021, the  
2 terms of which speak for itself. Except as expressly admitted and to the extent the allegations  
3 conflict with the terms of the documents, Rushmore denies the allegations of paragraph 4.11.

4           4.12     Rushmore lacks sufficient information to either admit or deny the allegations of  
5 paragraph 4.12.

6           4.13     Rushmore admits that the Sorensens' billing statements speak for themselves and  
7 include all charges allowed under the Note and Deed of Trust. Except as expressly admitted and  
8 to the extent the allegations conflict with the terms of the documents, Rushmore denies the  
9 allegations of Paragraph 4.13.

10                   4.13.1     Rushmore admits the allegations of Paragraph 4.13.1.

11                   4.13.2     Rushmore admits the allegations of Paragraph 4.13.2.

12                   4.13.3     Rushmore admits the allegations of Paragraph 4.13.3.

13                   4.13.4     Rushmore admits the allegations of Paragraph 4.13.4.

14                   4.13.5     Rushmore admits the allegations of Paragraph 4.13.5.

15                   4.13.6     Rushmore admits the allegations of Paragraph 4.13.6.

16                   4.13.7     Rushmore admits the allegations of Paragraph 4.13.7.

17                   4.13.8     Rushmore denies the allegations of Paragraph 4.13.8.

18                   4.13.9     Rushmore admits the allegations of Paragraph 4.13.9.

19                   4.13.10     Rushmore admits the allegations of Paragraph 4.13.10.

20                   4.13.11     Rushmore admits the allegations of Paragraph 4.13.11.

21                   4.13.12     Rushmore admits the allegations of Paragraph 4.13.12.

22           4.14     Rushmore denies the allegations of paragraph 4.14.  
23

1           4.15   Rushmore admits the Sorensens requested information from Rushmore in a letter  
2   dated February 21, 2021., Rushmore lacks sufficient information to either admit or deny the  
3   remaining allegations of paragraph 4.15 and so denies..

4           4.16   Rushmore admits that the March 18, 2021 letter speaks for itself. Except as  
5   admitted and to the extent the allegations conflict with the terms of the documents, Rushmore  
6   denies the allegations of paragraph 4.16.

7           4.17   Rushmore admits that it sent monthly mortgage statements to the Sorensens, the  
8   terms of which speak for themselves. Except as admitted and to the extent the allegations conflict  
9   with the terms of the monthly statements and the Proof of Claim filed in October 2018, Rushmore  
10   denies the allegations of paragraph 4.17.

11          4.18   Rushmore admits that it sent a mortgage statement to the Sorensens dated April 9,  
12   2021, the terms of which speak for itself. To the extent the allegations conflict with the terms of  
13   the documents, Rushmore denies the allegations of paragraph 4.18.

14          4.19   Rushmore lacks information sufficient to either admit or deny the allegations of  
15   paragraph 4.19 and so denies the same.

16          4.20   Rushmore denies the allegations of paragraph 4.20.

17          4.21   Rushmore denies the allegations of paragraph 4.21.

18          4.22   Rushmore denies the allegations of paragraph 4.22.

19          4.23   Rushmore denies the allegations of paragraph 4.23.

## 20                               **V.       FIRST CAUSE OF ACTION**

### 21                   **VIOLATION OF THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(k)**

22          5.1    Rushmore admits the allegations of paragraph 5.1 with respect to the Sorensens'  
23   Chapter 13 case.

1           5.2     Rushmore denies the allegations of paragraph 5.2.

2           5.3     Rushmore admits that the Sorensens sent a letter dated February 21, 2021, and  
3 that their letter speaks for itself, but denies the remaining allegations of paragraph 5.3.

4           5.4     Rushmore denies the allegations of paragraph 5.4.

5           5.5     Paragraph 5.5 states a conclusion of law to which no response is required. To the  
6 extent a response may be required, Rushmore responds that the case cited by Sorensens speaks  
7 for itself and denied any allegations to the contrary.

8           5.6     Rushmore denies the allegations of paragraph 5.6.

9                           **VI.     SECOND CAUSE OF ACTION**

10                   **FAILURE TO CREDIT PLAN PAYMENTS – VIOLATION OF 11 U.S.C. § 524(i)**

11           6.1     Paragraph 6.1 states a conclusion of law to which no response is required. To the  
12 extent a response is required, Rushmore admits that 11 U.S.C. § 524(i) speaks for itself.

13           6.2     Rushmore denies the allegations of paragraph 6.2.

14           6.3     Rushmore denies the allegations of paragraph 6.3.

15           6.4     Rushmore denies the allegations of paragraph 6.4.

16           6.5     Rushmore denies the allegations of paragraph 6.5.

17                           **VII.    THIRD CAUSE OF ACTION**

18                   **FAILURE TO PROVIDE NOTICE OF POSTPETITION FEES – VIOLATION OF**  
19                   **BANKRUPTCY RULE 3002.1(c)**

20           7.1     Paragraph 7.1 states a conclusion of law to which no response is required. To the  
21 extent a response is required, Rushmore admits that Federal Rule of Bankruptcy Procedure  
22 3002.1(c) speaks for itself.

23           7.2     Rushmore admits the allegations of paragraph 7.2.

1           7.3     Rushmore denies the allegations of paragraph 7.3.

2           7.4     Rushmore denies the allegations of paragraph 7.4.

3           7.5     Rushmore admit that Sorensens seek relief under their complaint, but deny that  
4 Rushmore is liable for such requested relief and otherwise deny the remaining allegations of  
5 paragraph 7.5 (erroneously set forth as second paragraph 7.4 in Sorensens' complaint).

6                           **VIII. PRAYER FOR RELIEF**

7           8.     Rushmore denies Plaintiffs are entitled to any of the relief sought in their prayer  
8 section 8.1 through 8.4.

9                           **AFFIRMATIVE DEFENSES**

10                          **FIRST AFFIRMATIVE DEFENSE**

11                                 (Failure to State Ultimate Facts)

12           9.     Plaintiffs fail to allege ultimate facts sufficient to support a claim against  
13 Rushmore.

14                          **SECOND AFFIRMATIVE DEFENSE**

15                                 (Contributory Negligence/Fault)

16           10.    Some or all of Plaintiffs' claims are barred or, in the alternative, their recovery,  
17 if any, should be reduced by reason of their negligence.

18                          **THIRD AFFIRMATIVE DEFENSE**

19                                 (Failure to Mitigate)

20           11.    Plaintiffs are barred from recovering some or all of his alleged damages by  
21 reason of Plaintiffs' failure to take reasonable, necessary, appropriate, and feasible steps to  
22 mitigate their alleged damages.

23                          **FOURTH AFFIRMATIVE DEFENSE**

(Waiver)

12. Some or all of Plaintiffs' claims may be barred by the doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

(Estoppel)

13. Some or all of Plaintiffs' claims may be barred by the doctrine of estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

(Failure of Conditions Precedent)

14. Some or all of Plaintiffs' claims may be barred by their own failure to comply with or satisfy conditions precedent to performance by or obligation of Rushmore.

**SEVENTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

15. Some of Plaintiffs' claims may be barred by the statute of limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

(Reservation of Affirmative Defenses)

16. Rushmore does not knowingly or intentionally waive any applicable affirmative defenses. Rushmore reserves the right to assert additional affirmative defenses that they may discover in the course of discovery and investigation of this matter and to which Rushmore may be entitled under the law, including case law, statutes, and rules of the jurisdiction whose laws may be found to apply to the claims asserted.

WHEREFORE, Rushmore prays for a judgment from this Court:

1. Dismissing Plaintiffs' claims with prejudice;
2. Awarding Rushmore its costs and litigation expenses, and, to the extent permitted by law, their reasonable attorney fees incurred; and



3. For such other relief as the Court deems appropriate.

DATED: November 1, 2021.

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s/ Michael J. Farrell

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Management Services LLC*

DEFENDANT RUSHMORE LOAN MANAGEMENT SERVICES, LLC'S  
ANSWER TO COMPLAINT – 9

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## CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the following documents on the following individuals in the manner indicated:

- Rushmore Loan Management Services, LLC's Answer to Complaint

Amanda N. Martin  
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936 N. 34th St. Ste. 300  
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Christina L. Henry  
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Attorneys for Plaintiffs

Dated November 1, 2021

<input type="checkbox"/>	U.S. MAIL
<input type="checkbox"/>	LEGAL MESSENGER
<input type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
<input type="checkbox"/>	EXPRESS DELIVERY
<input type="checkbox"/>	FACSIMILE
<input checked="" type="checkbox"/>	ECF

s/ Sonya Kuehn  
Legal Assistant

DEFENDANT RUSHMORE LOAN MANAGEMENT SERVICES, LLC'S  
ANSWER TO COMPLAINT – 10

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